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Supreme Court, 66

COUNTY OF NEW YORK.

NATIONAL PHONOGRAPH COMPANY,

Plaintiff,

against

NEW YORK PHONOGRAPH COMPANY,
IMPLEADED, ETC.,

Defendant. s

(Original)

AFFIDAVIT AND ORDER FOR
SECURITY FOR COSTS.

LOUIS HICKS,

Attorney for Defendant
N.Y.P.Co. 25 Pine Street, New York, N. Y.

Service of a copy of within

on this _____ day of _____ 190 , is hereby
admitted.

Attorney for

To _____ Esq.,

Attorney for

Street, New York, N. Y.

OCT 12 1903

Fol. 1

At a Special Term, Part 2, of the Supreme Court of New York, held at the County Court House, in the County of New York, on the 12th day of October, 1903.

Present:

HON. DAVID LEVENTRITT,

Justice.

NATIONAL PHONOGRAPH COMPANY,

Plaintiff,

-against-

Order for security for costs.

NEW YORK PHONOGRAPH COMPANY,
IMPLEADED, ETC.,

Defendants.

It appearing from the annexed affidavit of Louis Hicks, verified October 12, 1903, that plaintiff herein is a foreign corporation, that defendant, New York Phonograph Company, has duly appeared herein, and that its time to answer herein has not expired, and that no answer or other pleading has yet been served,

Fol. 2

NOW, upon said affidavit and upon motion of Louis Hicks, attorney for defendant, it is

O R D E R E D that the plaintiff, within twenty days from the service of a copy of this order upon its attorney, shall either pay into this court the sum of \$250., to be applied to the payment of the costs, if any, awarded against it in this action, or, at its election, file with the clerk of this court an undertaking to the defendants by one or more sureties to the effect that they will pay upon demand to the defendants all costs which may be awarded to them in the action, not exceeding \$250., and shall serve within the time aforesaid a written notice of such payment or filing upon the attorney for defendant, New York Phonograph Company, and

Fol. 3

THAT all proceedings of the plaintiff herein are

and shall be stayed, except to review or vacate this order, until the payment of said money or filing of said undertaking and service of said notice thereof, and until, if an undertaking shall be given, the allowance of the same, and

THAT the time of the defendant to answer or demur or make such motion with respect to the supplemental complaint herein as it may be advised, is extended until twenty days after service of notice of the payment of said money or, if an undertaking shall be given, until twenty days after the allowance of the same.

David Leventritt.

Fol. 1. SUPREME COURT OF NEW YORK,
County of New York.

NATIONAL PHONOGRAPH COMPANY,

Plaintiff,

against

NEW YORK PHONOGRAPH COMPANY,
IMPLEADED, ETC.,

Defendants.

State and County of New York, SS.:

LOUIS HICKS, being duly

sworn, says,

That he is attorney for defendant, New York Phonograph Company, in the above entitled action, retained by said defendant to defend this action; that this action was begun May 19, 1903, by National Phonograph Company, plaintiff above named, against Henry Durant Cheever, executor, as defendant,

Fol. 2. by the appearance of said defendant in this court by his attorney, George Murray Brooks; that thereupon said defendant, Cheever, moved this court for an order substituting New York Phonograph Company as defendant in this action in the place of said Cheever, executor, and discharging said Cheever from all liability upon his depositing with the County Clerk of this court certain certificates of stock; that upon said motion, an order to that effect was made and entered herein on or about August 13, 1903, and the said order further pro-

Fol. 3. vided for the service of a supplemental complaint upon New York Phonograph Company, which supplemental complaint has been duly served upon New York Phonograph Company; that the time of New York Phonograph Company to serve an answer or demurrer or make such motion with respect to the supplemental complaint herein as it may be advised will not expire till October 15, 1903; that New York Phonograph Company has duly

appeared herein by its attorney, Louis Hicks, a notice of appearance on behalf of New York Phonograph Company having been heretofore duly served on September 5, 1903 on plaintiff's attorney. It is alleged in the complaint herein, and it

Fol. 4 is the fact, that the National Phonograph Company, plaintiff herein, is now and was at the time of the commencement of this action a foreign corporation, organized under the laws of the State of New Jersey, and having its principal office and place of business in West Orange, in the State of New Jersey. This action is brought to recover 1017 shares of stock of this defendant, under an alleged trust agreement; that from the statement of the case in the action made to deponent by defendant, through its officers, deponent verily believes that defendant has a good and substantial defence upon the merits to the cause of action set forth in the com-

Fol. 5 plaint herein; that no answer or demurrer or pleading of any kind has been served by defendant, New York Phonograph Company, herein, and that no extension of time to answer or demur has been granted by stipulation or order herein, except one, which has not yet expired, and this application for this order is made solely for the purpose of requiring plaintiff within proper time to file security for costs, and to secure to defendant a reasonable time thereafter within which to plead or otherwise move herein; that no previous application has been made for the foregoing order, or for any order for security for costs or extension of time in which to answer or demur.

WHEREFORE deponent requests on behalf of New York

Fol. 6 Phonograph Company an order requiring National Phonograph Company to furnish security for costs herein, and extending the time of New York Phonograph Company to plead herein until after such security shall be furnished.

Subscribed and sworn to before
me, this 12th day of October, 1903. :

J. P. Dalton

Notary Public, Kings Co. #89
Cert. filed New York Co.

Louis Hicks